

## The Honorable Judge Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DENNIS MONTGOMERY,

**Plaintiff,**

V.

JAMES RISEN, HOUGHTON MIFFLIN  
HARCOURT PUBLISHING CO., HOUGHTON  
MIFFLIN HARCOURT CO..

## Defendants.

No. 2:15-CV-01955-JLR

**DEFENDANTS' MOTION TO  
STRIKE AND/OR SURREPLY**

Plaintiff Dennis Montgomery filed an unauthorized brief on December 24, 2015, in response to the pending discovery motion previously filed by Defendants James Risen, Houghton Mifflin Harcourt Publishing Company and Houghton Mifflin Harcourt Company, improperly sued as HMH Holdings, Inc., (collectively, “Defendants”). Defendants respectfully request that the Court strike Montgomery’s “Supplement” brief (Dkt. No. 6) because it is procedurally and substantively improper.

First, Montgomery's brief is improper under the rules. The Local Rules generally allow three rounds of briefing: the motion, the opposing party's response and the movant's reply. *Sheet Metal Workers v. Northshore Sheet Metal, Inc.*, No. CV12-01903RSL, 2013 WL 1412931, at \*1 (W.D. Wash. Apr. 8, 2013). Montgomery's brief constitutes an improper fourth-round filing. The Local Rules constrain fourth briefs to a sole purpose: the nonmovant

1 may file a surreply in order to request that the Court strike certain material contained in or  
 2 attached to the movant's reply. CR 7(g). *Sheet Metal Workers*, 2013 WL 1412931, at \*1. The  
 3 nonmovant must first provide notice of intent to file the brief. LCR 7(g)(1).

4 Here, Montgomery failed to provide the required notice of intent to file a surreply.

5 Second, Montgomery's brief is also substantively improper: it is not a request to strike  
 6 evidence Defendants proffered in their reply – nor could it be. *See Lewis v. Everett High Sch.*,  
 7 2007 WL 2712976, at \*1 (W.D. Wash. Sept. 14, 2007) (“Plaintiff's surreply did not contain a  
 8 request to strike material contained in defendants' reply brief and was therefore not authorized  
 9 by the Local Rule 7(g).”). Instead, Montgomery's brief simply reiterates Montgomery's  
 10 previous claim that Defendants' Motion is untimely. *See* Plaintiff's Response to Motion to  
 11 Compel Compliance with Subpoena (Dkt. 4); Dkt. 6 (Supplement) at 2-4. Reiterating previous  
 12 arguments “is not a proper use of the surreply motion to strike allowed for under the Local  
 13 Rules.” *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 308 F. Supp. 2d 1224, 1225 (W.D.  
 14 Wash. 2003).

15 Third, Montgomery lacks standing to challenge enforcement of the subpoena, which  
 16 compels testimony and documents from a third party, Istvan Andras Burgyan. *See* Reply in  
 17 Support of Motion to Compel (Dkt. 5). Montgomery nowhere disputes that he lacks standing.  
 18 *See* Supplement to Montgomery's Response (Dkt. 6). For the reasons stated in Defendants'  
 19 Reply at 3-4, the cases cited in the “Supplement” are inapposite where, as here, this is a  
 20 miscellaneous action and the underlying action is pending in another jurisdiction and where, in  
 21 any event, there is good cause.

22 For these reasons, the Court should strike Plaintiff's brief. *See, e.g., Holland v. Draper*,  
 23 No. C12-1409-JCC, 2013 WL 1914388, at \*2 (W.D. Wash. May 8, 2013).

25 DATED this 28<sup>th</sup> day of December, 2015.

1 Davis Wright Tremaine LLP  
2 Attorneys for Defendants

3 By s/Angela Galloway  
4 Angela Galloway WSBA #45330  
5 1201 Third Avenue, Suite 2200  
6 Seattle, WA 98101-3045  
7 Telephone: (206) 757-8274  
8 Fax: (206) 757-7274  
9 E-mail: angelagalloway@dwt.com

## DECLARATION OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on this day I caused a copy of the foregoing Motion to be served upon the following counsel of record:

Istvan Burgyan (X) By U. S. Mail  
4425 Issaquah Pine Lake Road Southeast ( ) By E-Mail  
Apt. A31 ( ) By Facsimile  
Sammamish, WA 98075-6255 ( ) By Messenger

### *Nonparty Respondent*

Larry Klayman (X) By U. S. Mail  
KLAYMAN LAW FIRM (X) By E-Mail  
2520 Coral Way Suite 2027 ( ) By Facsimile  
Miami, FL 33145 ( ) By Messenger  
leklayman@gmail.com

*Attorney for Plaintiff*

Brian Toth (X) By U. S. Mail  
Sanford Lewis Bohrer (X) By E-Mail  
HOLLAND & KNIGHT LLP ( ) By Facsimile  
701 Brickell Avenue, Suite 3300 ( ) By Messenger  
Miami, Florida 33131  
sandy.bohrer@hklaw.com  
brian.toth@hklaw.com

*Attorney for Defendants*

DATED this 28<sup>th</sup> day of December, 2015.

Davis Wright Tremaine LLP  
By   
Devra Slaughter  
Legal Assistant  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
Tel: 206.757.8809  
Fax: 206.757.7700  
Email: [devraslaughter@dwt.com](mailto:devraslaughter@dwt.com)